

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FRANK J. POVOSKI, JR., 05 B 2531,
Plaintiff,

-v-

STEVEN E. SMALL, et al.,
Defendants.

DECISION AND ORDER
07-CV-6038 CJS

This is an action brought pursuant to 42 U.S.C. § 1983, in which Plaintiff is suing various law enforcement personnel, including defendant Denise Michel (“Michel”). On September 26, 2008, Michel filed a motion [#11] to dismiss Plaintiff’s Amended Complaint, pursuant to Federal Rule of Civil Procedure 12(b)(6), on the grounds that the claim against her is barred by *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). Subsequently, at a conference held before the Honorable Jonathan W. Feldman, United States Magistrate Judge, Plaintiff orally agreed to discontinue the action against Michel. On February 24, 2009, the Court received a letter from Michel’s attorney, stating that he had prepared a stipulation of discontinuance and sent it to Plaintiff, but that Plaintiff had not returned the stipulation to him. Subsequently, the Court issued a Decision and Order [#30], directing Plaintiff to notify the Court in writing, on or before April 30, 2009, whether he was discontinuing his action against Michel. The Decision and Order further stated that if Plaintiff failed to comply with the Court’s direction, the Court would grant Michel’s motion. Plaintiff having failed to file any clarification, it appears that he has no objection to Michel’s motion. Accordingly, it is hereby

ORDERED, that Michel's Motion to Dismiss [#11] is granted, and this action is dismissed as against Michel with prejudice. The Clerk of the Court is directed to terminate Michel as a party to this action.

Dated: May 13, 2009
Rochester, New York

/s/ Charles J. Siragusa
CHARLES J. SIRAGUSA
United States District Judge